

DEREK LANGTON (4068)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

GARY S. KAPLAN (admitted *Pro Hac Vice*)
BETH T. GOLUB (admitted *Pro Hac Vice*)
WINNIE WONG (admitted *Pro Hac Vice*)
SEYFARTH SHAW LLP
55 E. Monroe Street, Suite 4200
Chicago, IL 60603
Telephone: (312) 269-8871
Facsimile: (312) 269-8869

Attorneys for Defendants Sky Chefs, Inc., Michael Podlucky and
Kerri Roberts

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

JOSE CUBAS,

Plaintiff,

vs.

SKY CHEFS, INC., a Delaware
Corporation; and MICHAEL PODLUCKY,
an individual; and KERRI ROBERTS, and
individual,
Defendants.

Case No. 2:04-CV-01099TS

**DEFENDANTS' MOTION TO COMPEL
OR IN THE ALTERNATIVE FOR THE
SANCTION OF DISMISSAL**

District Judge Ted Stewart
Magistrate Judge Brooke C. Wells

Defendants Sky Chefs, Inc. ("Sky Chefs"), Michael Podlucky, and Kerri Roberts
(collectively "Defendants") by their attorneys and pursuant to Federal Rule of Civil Procedure

37 and District of Utah Rule 37-1, hereby move to compel Plaintiff Jose Cubas to provide more complete responses to Interrogatory Nos. 17 and 20 in Defendants' First Set of Interrogatories, or, in the alternative, for the sanction of dismissal of Plaintiff's Sixth and Eighth Claims for Relief in Plaintiff's First Amended Complaint. Pursuant to Rule 37(a)(4), Defendants also seek attorneys' fees incurred by bringing this motion. In support of their motion, Defendants state as follows:

1. Plaintiff is a former employee of Sky Chefs. After his termination, Plaintiff filed a nine-count Complaint against Defendants, including a claim for Breach of Contract (based on alleged employment contract) and Tortious Interference with Contractual Relations (the Sixth and Eighth claims for relief).

2. Because Plaintiff *has refused* to identify the documents and/or communications that comprise his alleged employment contract, more than a year into discovery and despite three genuine attempts by Defendants to obtain such information, Defendants still know nothing more than Plaintiff's vague Complaint allegations .

3. Accordingly, Defendants request that the Court compel Plaintiff to identify the specific manuals, policies, handbooks, written communications and verbal communications, as well as provide all the information requested in Interrogatories 17 and 20, that form the basis of Plaintiff's purported employment contract.

4. In the alternative, because Plaintiff has willfully and voluntarily refused to provide any information beyond his bare complaint allegations, Defendants request that the Court dismiss Plaintiff's Sixth (Breach of Contract) and Eighth (Tortious Interference with Contractual Relations) Claims for Relief.

5. Additionally, pursuant to Rule 37(a)(4), Defendants request that this Court award them their attorneys' fees incurred with bringing this motion.

6. The bases for this motion are more fully set forth in Defendants' accompanying Memorandum of Law in Support of Their Motion to Compel or in the Alternative for the Sanction of Dismissal.

Compliance With DU Civ 37-1

7. In compliance with the District of Utah's Rules of Practice, DU Civ 37-1, as detailed above, Defendants have attempted to resolve their differences with Plaintiff regarding Interrogatories No. 17 and 20 through exchanging correspondence. (letters are attached as Exhibits D and E to Defendants' Memorandum of Law in Support of Their Motion). Plaintiff's counsel's February 9, 2006 correspondence made clear that Plaintiff has no intention of supplementing or revising his answers to discovery.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court grant their motion to compel or in the alternative for the sanction of dismissal and the attorneys' fees incurred in connection with bringing this motion.

DATED: February 28, 2006

SEYFARTH SHAW LLP

By /s/ Winnie Wong
GARY S. KAPLAN
BETH T. GOLUB
WINNIE WONG

PARSONS BEHLE & LATIMER
DEREK LANGTON
JOHN E. DELANEY

Attorneys for Defendants Sky Chefs, Inc.,
Michael Podlucky and Keri Roberts

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing DEFENDANTS' MOTION TO COMPEL OR IN THE ALTERNATIVE FOR THE SANCTION OF DISMISSAL to be served upon the following counsel of record:

Stanley J. Preston
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145

via the Court's electronic noticing system this 28th Day of February 2006.

_____/s/ Winnie Wong_____

Winnie Wong